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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/521,646	01/13/2005	Berta Kotar Jordan	4061-25PUS	9299
27799 7590 01/07/2009 COHEN, PONTANI, LIEBERMAN & PAVANE LLP 551 FIFTH AVENUE SUITE 1210 NEW YORK, NY 10176				
EXAMINER COLEMAN, BRENDA LIBBY				
ART UNIT		PAPER NUMBER		
1624				
MAIL DATE		DELIVERY MODE		
01/07/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/521,646

Applicant(s)

KOTAR JORDAN ET AL.

Examiner

Brenda L. Coleman

Art Unit

1624

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 October 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6-9, 12-22, 24 and 26-28 is/are allowed.
- 6) ☒ Claim(s) 1-5, 10, 11, 23 and 25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

Claims 1-28 are pending in the application.

This action is in response to applicants' amendment dated October 16, 2008.

Claims 4 and 23 have been amended.

Response to Arguments

Applicants' arguments filed October 16, 2008 have been fully considered with the following effect:

1. With regards to the 35 U.S.C. § 102(b), anticipation rejection of claims 1-5, 10, 11 and 25, labeled paragraph 2) of the last office action. The applicants' arguments have been fully considered, however they were not found persuasive. The Applicants' stated that Bunnell at col. 1, lines 63-64 describes the preparation of a lower alcohol solvate of olanzapine. The applicants' further amended claim 4 to clarify that the solvate of olanzapine is only a starting material in the process of claim 1. First, an amendment in claim 4 further limiting the solvate of olanzapine does not provide for specifics of claim 1 which can still be read in its broadest interpretation. However, Bunnell does teach the process of preparing Form I olanzapine as set forth in claim 1 including the limitations of claim 4. Bunnell specifically states that the solvates of this invention are particularly useful

for preparing substantially pure anhydrous Form I olanzapine as set forth in column 12, lines 24-26. Bunnell also states that "The present invention provides a **process for preparing anhydrous Form I comprising contacting a lower alcohol solvate with a solvent selected from** the group consisting of ethyl acetate, acetone, **2-propanol**, t-butanol, tetrahydrofuran and toluene", see column 1, lines 58-62.

Claims 1-5, 10, 11 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by BUNNELL et al., U.S. Patent No. 5,703,232, for reasons of record and stated above.

2. The applicant's amendments and arguments are sufficient to overcome the 35 U.S.C. § 102, anticipation rejection labeled paragraph 3) of the last office action, which is hereby **withdrawn**.

Allowable Subject Matter

3. Claims 6-9, 12-22, 24 and 26-28 are allowed. None of the prior art of record or a search in the pertinent art area teaches the solvates, Form A of olanzapine and process of preparing anhydrous forms and Form A of olanzapine as claimed herein.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened

statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brenda L. Coleman whose telephone number is 571-272-0665. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James O. Wilson can be reached on 571-272-0661. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Brenda L. Coleman/
Primary Examiner, Art Unit 1624